3 SELECTED HATCH ACT OPINIONS//

NOVEMBER 30, 1940//

2 U.S. FARM CREDIT ADMINISTRATION//

WASHINGTON, D. C.

CONTENTS

DEPARTMENT OF JUSTICE
Washington, D. C.

August 10, 1939.

CIRCULAR NO. 3285

To all officials and employees of the Department of Justice and United States Courts.

Re: Hatch Act provisions most important to Federal Government employees.

The provisions of the Hatch Act (Public No. 252, approved August 2, 1939) that are of the most general interest to Federal Government employees, and most likely to cause inquiry and concern, are Sections 2 and 9, as follows, especially the underlined portions:

"Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions."

"Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent

of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws."

Provisions similar to the foregoing are found in Civil Service Rule 1, Section 1. Many of the questions and situations currently arising under the Hatch law have previously been considered and ruled upon by the Civil Service Commission in construing the provisions of the Civil Service Rules. These rulings have been published in Form 1236, issued by the Civil Service Commission in August 1936, entitled "Political Activities and Political Assessments," and are binding upon civil service employees.

While the rulings contained in Form 1236 are not necessarily controlling as to non-civil service employees, they will be found instructive and helpful in dealing with many of the problems that will arise under the Hatch law. Where a particular situation is not covered by these rulings, or where for substantial reasons it appears to require a different interpretation, a determination of the question can be obtained from the Department.

Civil Service employees are required by the Civil Service Rules to confine their opinions on political subjects to private expression. From the corresponding provision of the Hatch law, on the other hand, the word "privately" was omitted. Accordingly, as stated by the President in his message to the Congress approving the Hatch bill, non-civil service employees would not violate the Act "if they should merely express their opinion or preference publicly - orally, by radio, or in writing - without doing so as part of an organized political campaign."

It should be noted that while the penalty for violation of Section 9 is removal from office as in the case of the corresponding Rule 1 of the Civil Service Rules, the penalty for violation of Section 2 is a fine of not to exceed $1,000.00 or imprisonment for not more than one year, or both.

The provisions of Section 2 apply to all persons employed in administrative positions in the executive, legislative, and judicial branches of the Federal Government, whereas Section 9 applies only to employees of the executive branch. Other provisions of the Hatch law relating to the improper use of relief appropriations for political purposes, intimidation of voters, and the like, apply to all persons, including employees of state and local governments and private individuals.

FRANK MURPHY,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.

October 26, 1939

CIRCULAR NO. 3301.

In the interpretation and application of the Hatch law, a number of cases have arisen under Section 9(a) in which doubt has been expressed and the Department has been called upon to make a ruling. In issuing this circular, it is the aim of the Department merely to summarize these rulings for the benefit and information of government employees and the public generally. It is not the purpose to enumerate or describe all the activities and positions to which the law may or may not apply.

Accordingly, the circular should not be regarded as a complete or comprehensive statement of all the positions and activities to which Section 9(a) applies. The law is general in scope and (with a few prominent exceptions) forbids all officers and employees of the executive branch of the Federal Government to take any active part in political management or political campaigns.

The pertinent provisions of Section 9 are as follows:

> "No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects."

I.

It has been ruled that the following officers and employees in the executive branch of the Federal Government, among others, are affected by the provisions of Section 9 of the Hatch Act:

1. United States Attorneys and Marshals, their assistants and deputies.

2. Special Attorneys of the Department of Justice and Special Assistants to the Attorney General.

3. Temporary employees, substitute employees, and per diem employees, during the period of their active employment.

4. Reserve officers of the United States Army, Navy, and Marine Corps during the period of their active duty.

5. Furloughed employees and employees on leave, whether with or without pay.

6. Officers and employees of governmental agencies such as the Home Owners Loan Corporation, the Reconstruction Finance Corporation, and the Public Works Administration.

7. Officers and employees occupying administrative and supervisory positions in the Works Projects Administration, the National Youth Administration, and the Civilian Conservation Corps.

Note: Persons employed in any administrative or supervisory capacity by any agency of the Federal government whose compensation or any part thereof is paid from funds authorized by the Emergency Relief Appropriation Act of 1939 should consult Section 31 of that Act, which limits their public expression of opinions on political subjects more strictly than does the Hatch Act.

II.

Section 9 of the Hatch Act has been construed as not applying to the following:

1. Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks to members of Congress and Congressional committees.

2. Officers and employees of the judicial branch of the Federal Government, including United States Commissioners, Clerks of United States Courts, Referees in Bankruptcy, and their secretaries, deputies, and clerks.

3. Officers and employees of State and local governments, even though their employment involves the expenditure of Federal funds.

4. Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, such as fee attorneys, inspectors, appraisers, and management brokers for the Home Owners Loan Corporation, and special fee attorneys for the Reconstruction Finance Corporation.

5. Persons who receive benefit payments, such as old age assistance and unemployment compensation under the Social Security Act, rural rehabilitation grants, and payments under the Agricultural Conservation Program.

6. Retired employees.

III.

It has been ruled that the following acts constitute taking an "active part in political management or in political campaigns" within the meaning of Section 9 of the Hatch Act:

1. Holding office in a political party or a political club.

2. Attending political conventions as a delegate or alternate.

3. Serving on committees of a political party or a political club.

4. Distributing buttons or printed matter in support of any candidate or party.

5. Serving at party headquarters or as watchers at the polls, or otherwise assisting a party or candidate in any primary or election campaign, whether or not Federal offices are involved.

6. Being a candidate for elective office--Federal, State, or local.

7. Soliciting funds for a political organization or campaign fund.

Note: Severe penalties are provided under Section 5 of the Hatch Act for those who solicit or receive any assessment, subscription, or contribution for any political purpose from a person known to be receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes. Such persons include the administrative and supervisory personnel of the relief agencies, as well as the actual recipients of relief.

IV.

The following activities are not considered to be prohibited by the Hatch Act:

1. Holding membership in a political organization and attending its meetings otherwise than as an officer or delegate.

2. Participating in the activities of civic associations and educational groups, provided the activities in question are divorced from the campaigns of particular candidates or parties.

3. Holding a State or local office (but see III (6) above).

Note: An executive order of January 17, 1873, forbids persons holding a Federal civil office by appointment from holding any State or municipal office, with the exception of positions such as justice of the peace, notary public, commissioner to take acknowledgment of deeds or bail or to administer oaths, and positions on boards of education, school committees, public libraries, and in religious or eleemosynary institutions. Special exceptions are made in subsequent executive orders.

Circulars summarizing additional rulings will be issued as the necessity arises.

FRANK MURPHY,

Attorney General.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

November 16, 1939

MEMORANDUM FOR MR. ROY F. HENDRICKSON,
Director of Personnel.

Dear Mr. Hendrickson:

This acknowledges the memorandum of Mr. P. L. Gladmon of October 16, 1939, in which he raises certain questions pertaining to the following provisions of section 9 of the act of August 2, 1939 (Public No. 252, 76th Congress, 1st Session):

> "Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns.* * *.
>
> "(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

Mr. Gladmon asks, "Is it mandatory for the Department to take steps to remove any employee who violates the provisions of this Act or may it accept the employee's resignation? Should such action be with or without prejudice?"

Clearly, the provisions of subsection (b) of section 9 of the act of August 2, 1939, supra, impose a duty on the Department to cause the immediate removal of any employee who violates the provisions of subsection (a) of section 9 of that act. However, we do not construe this legislation as preventing the Department from accepting the resignation of an employee violating the statute, provided, of course, that the resignation is effective as of a date no later than that on which the employee's involuntary removal would occur through administrative action. Under such circumstances, a voluntary separation from the service would appear to carry out the intent and purpose of this statute.

The act is silent as to whether an employee's removal from his position should be with or without prejudice. It would seem, therefore, that the administrative rules applied in making such a determination in the ordinary situation could also be applied, without objection, in situations arising as a result of violations of this statute. Such a determination naturally turns on the facts of the individual case, and should be administratively made as each case arises.

Relative to Mr. Gladmon's question regarding the effective date on which an employee should be separated from the service because of a violation of subsection (a) of section 9 of the act of August 2, 1939, supra, it is provided by subsection (b) of section 9 that an employee violating the statute shall be removed immediately from his position. Section 6 of the act of August 24, 1912 (37 Stat. 555, 5 U.S.C. 652), provides: "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; * * *." Inasmuch as section 10 of the act of August 2, 1939, supra, provides that the terms of the act "shall be in addition to, not in substitution for, existing law," we are of the opinion that the procedure set forth in section 6 of the act of August 24, 1912, for removing employees, should be followed by the Department in carrying out the removal provision of section 9 of the act of August 2, 1939. This will not only preserve unity between the two statutes, but, since the broad general terms of section 9 will undoubtedly give rise to many alleged violations of the act, it would be against good administrative practice to cause removal without affording an opportunity to the employee for answering the charges placed against him.

Consequently, removal in accordance with the provisions of section 6 of the act of August 24, 1912, whether the employee is or is not in the classified civil service, would appear to carry out the spirit and intent of section 9 of the act of August 2, 1939.

With respect to the specific case presented, which relates to the apparent violation of the statute by Mr. Joe B. Cooper, an employee of the Farm Security Administration, who is serving as Rural Rehabilitation Supervisor at Watkinsville, Georgia, and who was elected County Commissioner of Oconee County, Georgia, on October 10, 1939, it is the opinion of this office that steps should be taken at once to terminate his employment with the Federal Government. Consequently, the accrued annual leave, to which Mr. Cooper is entitled, but unused as of the effective date of his

separation from the service, must be forfeited. Annual leave is a grant in kind only, and it is a well-settled rule that once an employee is separated from the service, regardless of cause, he no longer has a status under which he may be granted annual leave, nor is he entitled to cash payment for leave earned but unused at the effective date of his separation from the service. 16 Comp. Gen. 28; 16 Comp. Gen. 899; 17 Comp. Gen. 48. Inasmuch as Mr. Cooper has apparently violated the provisions of the act of August 2, 1939, supra, he is not permitted, under the terms of that act, to retain his present position until he has had an opportunity to use his accrued leave.

Your enclosure is returned.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

Enclosure.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

February 16, 1940

MEMORANDUM FOR MR. LEROY K. SMITH,
Manager, Federal Crop Insurance Corporation.

Dear Mr. Smith:

This acknowledges your memorandum of January 22, 1940, regarding an employee of the Federal Crop Insurance Corporation who has served, in the past, as doorkeeper at several Democratic national conventions. It is stated that, except for the maintenance of order incident to the discharge of those duties assigned to doorkeepers, no part is taken in any of the activities carried on in connection with the convention, and no compensation is received for such service. Since there is some possibility that this employee will be asked to perform similar duties in the forthcoming Democratic national convention, the opinion of this office is requested as to whether such activity is prohibited by the Hatch Act of August 2, 1939 (Public, No. 252, 76th Congress, First Session). It is understood that this employee does not have a classified civil service status.

Section 9 of the Hatch Act provides that no officer or employee in the executive branch of the Federal Government, or in any agency or department thereof, shall take any active part in political management or in political campaigns. Civil Service Rule I, Section 1, contains a similar provision which has been interpreted by the Civil Service Commission as prohibiting Federal officers and employees from serving in a political convention. This ruling, contained in Civil Service Form 1236, paragraph 13, reads as follows:

> "Candidacy for or service as delegate, alternate, or proxy in any political convention or service as an officer or employee thereof is prohibited. Attendance merely as a spectator is permissible, but the employee so attending must not take any part in the convention or in the deliberations or proceedings of any of its committees, and must refrain from any public display of partisanship or obtrusive demonstration or interference."

While the rulings of the Civil Service Commission are not necessarily controlling as to non-civil service employees, the Attorney General has stated that they are to be found instructive

and helpful in dealing with many of the questions that arise under the Hatch Act and has intimated that such rulings should be followed unless, for substantial reasons, the provisions of the Hatch Act appear to require a different interpretation. See Department of Justice Circular No. 3285, August 10, 1939. The ruling of the Civil Service Commission quoted above appears to reach a logical result and is in line with existing authoritative rulings under which certain political activities, closely allied with these of the present subject, are held to be prohibited by the Hatch Act.

Consequently, this office is of the opinion that such an activity as is contemplated here must be viewed as coming within the scope of the Hatch Act, and, therefore, would be legally objectionable.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

March 14, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

This acknowledges Mr. P. L. Gladmon's memorandum of January 30, 1940, requesting this office to consider the several questions presented in Mr. H. V. Geib's letter to you of January 23, 1940, regarding political activity by Federal employees.

Mr. Geib's first question relates to a situation, occurring during the last Presidential election, in which a project manager called a meeting of his entire staff, at the request of a politician who addressed the meeting and demanded contributions of the employees toward a campaign fund. Attendance at the meeting and a monetary contribution were given the appearance of being compulsory, and the employees were led to believe that the contributions were requisite to continuance in their Government positions. Mr. Geib inquires whether anything can be done to stop this type of activity, and whether the Civil Service Commission or any governmental agency may investigate an employee's political contributions or party connections and use the result thereof as a criterion for promoting or demoting the employee. It is understood that the employees made the subject of Mr. Geib's letter have the status of classified civil service employees.

Section 12 of the act of January 16, 1883, as amended (18 U.S.C. 209), provides that no person shall solicit or receive political contributions from officers or employees of the Government in any room or building occupied by them in the discharge of official duties.

Section 13 of the act of January 16, 1883, as amended (18 U.S.C. 210), provides that no officer or employee of the United States "shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose."

Civil Service Rule I, section 2, based on the provisions of section 2 of the act of January 16, 1883 (22 Stat. 403; 5 U.S.C. 633), prescribes that "No discrimination shall be exercised,

threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations."

Section 9 of the Hatch Act of August 2, 1939 (Public, No. 252, 76th Congress, 1st Session), makes it unlawful for any administrative officer or person employed in the executive branch of the Federal Government to use his official authority or influence for the purpose of interfering with, or affecting the result of, an election.

There is other Federal legislation designed to hold secure to Federal employees certain civil rights accorded all citizens under the Constitution and laws of the United States, but, from the foregoing citations, it may readily be seen that the Federal Government had made ample provision for the protection of its employees from exploitation in situations such as the one described by Mr. Geib. While there appears to be no express legislation prohibiting political organizations or individuals outside the Government from attempting to obtain the political contribution and activity of a Federal employee through intimidation, coercion, or otherwise, in circumstances such as are here involved, the existing legislation has the effect of discouraging such action and, therefore, accomplishes indirectly what it does not attempt to do directly, as an employee is thus given an opportunity to repel, with a feeling of security, any political demands made upon him. Consequently, the solution of the matter would seem to lie in the employee's cognizance and exercise of the rights accorded to him by law.

Mr. Geib's second question relates to Federal employees taking an active part in procuring the enactment of legislation which is of particular interest to the bureau in which they are employed. If such activity is permissible, Mr. Geib desires to be informed whether employees may be asked by their superior officers to contribute money, or be urged to join associations which use assessed dues for promoting the legislation.

Section 6 of the act of August 24, 1912 (37 Stat. 555; 5 U.S.C. 652), provides that "The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either house of Congress or to any committee or member thereof, shall not be denied or interfered with." This statutory provision would seem to indicate Congressional approval of Federal employees interesting themselves in legislative matters, and its language seems to be sufficient to include an activity such as that in question. We have discovered no statute declaring that administrative officers may not solicit funds from employees or urge

membership in associations for the purpose of promoting legislation. In this connection, however, your attention is directed to Paragraph 1542 of the Department Regulations, which describes as a prohibited type of political activity "soliciting political support for any party, faction, candidate, or measure"; also to Paragraph 1577 of the Department Regulations, which prohibits circulation of subscription lists or other methods of collecting contributions from employees for outside organizations, and which declares that welfare organizations of the Department iself must secure administrative approval before undertaking the collection of contributions. In Secretary's Memorandum No. 730 of August 11, 1937, reference is made to Budget Bureau Circular No. 336, which provides that no estimate or request for an appropriation or an increase of an item, and no recommendation as to the revenue needs of the Government, shall be submitted to Congress by any officer or employee except at the request of Congress. Budget Circular No. 336 also directs attention to the requirement of the President that no officer or employee shall advocate or oppose legislation in his official capacity before a committee of Congress, except private relief legislation, without the approval of the Bureau of the Budget. Provisions for carrying out these requirements are contained in Secretary's Memorandum No. 730. Within these limitations, the handling of the matter is one of administrative policy.

Attention should be called, however, to the provisions of section 6 of the act of July 11, 1919 (41 Stat. 68; 18 U.S.C. 201), which prohibit the use of Federal funds, either directly or indirectly, for the purpose of influencing any member of Congress to favor or oppose any legislation by Congress, except in connection with the official business of the United States.

The third question is whether Federal employees may use their influence in connection with minor elections, such as the election of members of the Texas State Soil Conservation Board. The restrictions placed by law on the political activities of Federal employees are not confined to national politics. By the provisions of Section 9 of the Hatch Act, supra, it is specifically provided that an employee of the executive branch of the Federal Government may not use his official authority or influence for the purpose of interfering with, or affecting the results of, an election, nor take an active part in political management or in political campaigns. These restrictive provisions have been construed by the Civil Service Commission and the Attorney General of the United States as extending not only to national politics but also to State and local politics. See Civil Service Commission Form No. 1236, paragraph 2; Department of Justice Circular No. 3301, dated October 26, 1939. The State Soil Conservation Board established by the State Soil Conservation Law of April 20, 1939 (Vernon's Texas Civil Statutes, Annotated, Article 165a), is

defined in the act as an agency of the State. Its purposes and functions are those of a body politic, and the election of its members must undoubtedly be considered as constituting a political activity. Not only is it clear that employees of this Department are forbidden by the Hatch Act to use their official influence in any election, but the general terms of section 9 of the act also permit a construction which leaves but few political activities in which participation of an unofficial nature is allowed. Many of the activities which are considered to be prohibited by the Hatch Act, as well as by the Civil Service rules and regulations, are set forth in Personnel Circular No. 84, dated January 16, 1940, and employees of the Department, who anticipate taking an active part in political matters, either of a national or local character, should find the circular a valuable guide in this connection.

Mr. Geib's letter is returned.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

Attachment.

COMPTROLLER GENERAL OF THE UNITED STATES
Washington, D. C.

B-9118 March 29, 1940

The Honorable,
The Secretary of Agriculture.

Sir:

I have your letter of March 15, 1940, as follows:

"Mr. Wallace P. Pruitt, Jr., Senior Messenger (CU-3) in the Farm Credit Administration, submitted his resignation to become effective at the expiration of his annual leave. Under date of February 15, 1940, the resignation was accepted as submitted, to become effective on March 6, 1940. At the time the resignation was submitted, Mr. Pruitt stated orally that he might file in the primaries as a candidate for election as representative to the Congress from his district. Mr. Pruitt's telegram of March 1, advises that he filed as such a candidate for the Congress on February 27, 1940.

"Section 9 of the Act of Congress approved August 2, 1939, (Public No. 252) provides that no officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or political campaigns; and requires that any person violating the provisions of the section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

"Senate Document No. 135, 76th Congress, 2d Session, containing an interpretation of the Hatch Political Activities Act of August 2, 1939, by the Attorney General of the United States, indicates (pages 3 and 4, Circular No. 3301) that furloughed employees and employees on leave, whether with or without pay, are affected by the provisions of said Section 9, and that being a candidate for an elective office--Federal, State, or local--is an act which constitutes the taking of an active part in political management or political campaigns within the meaning of Section 9.

"Decision of February 19, 1937, (16 Comp. Gen. 776) holds that a Federal employee whose resignation from the Federal position was tendered on the same day that he accepted employment under a State government may be paid for accrued annual

leave for a period beyond the acceptance of such employment where his resignation was accepted as tendered, effective at the termination of the period of earned leave. However, this conclusion apparently is based very largely on the fact that, in the circumstances under consideration, there was no Federal statute precluding the payment of salary or compensation otherwise due an officer or employee of the United States for a period during which he might be holding an office or position under a State government, and that Executive Order No. 9 of January 17, 1873, as amended, likewise did not prohibit such payment of compensation.

"Mr. Pruitt's salary to and including February 15 has been paid, and I shall appreciate receiving your decision, as soon as possible, expressing your conclusion as to the effect Mr. Pruitt's act of filing as a candidate in the primaries on February 27 had on his right to receive pay from February 16 to March 6, with due regard for the fact that on and after February 16 Mr. Pruitt's status was that of an employee on leave of absence pending separation at the expiration of said leave. If your decision should be that Mr. Pruitt's act of filing on February 27 requires that his services be terminated as of that time, please advise whether there is any prohibition against making payment to him of compensation for the period from February 16 to and including the new termination date."

Section 9 of the act of August 2, 1939, Public No. 252, provides as follows:

"(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

"(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

The provisions of section 9(b) of the statute are not self-executing, and it follows that there is required administrative or executive action to remove an officer or employee who violates section 9(a) of the statute. The inhibition of the statute against the use "thereafter" of appropriated funds for payment of the compensation of "such person" attaches upon the removal from office or position as therein prescribed the word "thereafter" as used in the statute relating back to the prescribed action of removal, and not to the date of some action on the part of an officer or employee which subsequently may be determined to have violated section 9(a) of the statute. In other words, the statute prescribed a cause of removal from the service and may not be regarded as working a forfeiture of all or any part of the accrued unpaid compensation of an officer or employee who has not been removed from his office or position pursuant to such statute.

Said section 9(b) of the act of August 2, 1939, makes it mandatory to remove an employee immediately upon his violation of the provisions of section 9(a) of the statute. Regarding the meaning of the word "immediately" it was stated in decision of October 28, 1939, B-6631, as follows:

"The words 'immediate' or 'immediately' when used to denote a relationship in point of time, have been defined many times by various courts. For example, it is said in Myers v. Dunn, 104 S. W. 352, 13 L.R.A. (N.S.) 881, that 'The construction given generally by the courts to the words "immediately" and "forthwith," whether occurring in contracts or statutes, is that the act referred to should be performed within such convenient time as is reasonably requisite, and what is a reasonable time is to be determined by the facts of the particular case in hand,' citing Lincoln v. Field, 54 Ark. 471, 16 S. W. 288; Pennsylvania R. Co. v. Reichert, 58 Md. 261; Pittsburgh V. & C. R. Co. Com., 101 Pa. 192; Martin v. Pifer, 96 Ind. 245; Kent v. Miles, 65 Vt. 582, 27 Atl. 194. See also Lucas v. Western Union Telegraph Company, 131 Iowa 669, 109 N. W. 191, 6 L.R.A. (N.S.) 1016."

While it would appear that under the interpretation of the statute by the Attorney General this employee could have been removed on March 1, 1940, date of his telegram advising that he had filed as a candidate for an elective office, or as soon thereafter as reasonably requisite to accomplish administratively his removal from his position, without regard to any accrued or unused leave, it is

understood the fact is he was not so removed by administrative action, but that his services otherwise officially terminated March 6, 1940, the effective date of his resignation which had been tendered and accepted by administrative action prior to the date he filed as a candidate.

You are advised, on the facts presented, that if the former employee is not indebted to the United States, compensation otherwise accruing may be paid to him through March 6, 1940, date of his separation from the service by resignation.

Respectfully,

(Signed) R. N. Elliott,

Acting Comptroller General of the
United States

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

April 15, 1940

MEMORANDUM FOR MR. R. M. EVANS
Administrator, Agricultural Adjustment Administration

Attention: North Central Division

Dear Mr. Evans:

Reference is made to your memorandum of March 16, 1940, requesting the advice of this office as to the following question relating to members of community and county agricultural conservation committees, and their employees:

> "Have county committeemen and community committeemen the right to serve as delegates to political party conventions or as judges or clerks at primary or regular elections at polling places?"

Since community and county agricultural conservation committeemen and employees of the committees are not subject to the provisions of Section 9 of the Hatch Act (see Circular of the Agricultural Adjustment Administration on political activity of these persons), it will be necessary to consider only the provisions of the Articles of Association for County Agricultural Associations, Form ACP-71. Article V, Section 7, of these Articles provides that:

> "No person who has been a candidate during the current year or who holds or becomes a candidate for a Federal, State, or major county office filled by an election held pursuant to law or who is or during the current year has been or becomes an officer or employee of any political party or political organization shall be eligible to serve as a member, alternate member, officer, or employee of a county or community committee or as a delegate or alternate delegate to the county convention. The tenure of office of any such committeeman, delegate, officer, or employee shall be automatically terminated and a vacancy shall exist as soon as such person becomes such a candidate or accepts such a political position."

It is clear that the committeemen and the employees of the committees may not serve as delegates to political party conventions, since this would constitute activity as officers or employees

of political parties or political organizations. With regard to service as judges or clerks at primary or regular elections, however, the question is slightly more difficult.

Service as judges or clerks at regular elections, of course, would not constitute activity as officers or employees of political parties. As to primary elections, however, the determination may depend upon whether, under the laws of the State involved, the judges, clerks, or similar election officers are employees of the State or local government, or are employees of the parties. Generally, a State may impose the duty on each political party to hold its own primary election, although, of course, the State may hold the election under its own supervision. 18 Am. Jur., Elections, page 147. Moreover, the State may leave the expense of the primary election to the party concerned, or may meet such expense as a cost of Government. 18 Am. Jur., Elections, page 156.

The several States are not uniform as to the manner and system of holding primary elections. It happens, however, that all of the States composing the North Central Division of the Agricultural Adjustment Administration provide for the holding of the primary elections under the supervision of the States, and with any expense necessary thereto being met by the States. The relevant provisions in effect in these States are, briefly, as follows:

In Indiana, primary election officials are named by the parties participating in the preceding election with equal voice, except that the majority party names the ranking official, remaining officials being named in rotation. Burns Ind. Stats., Ann., Par. 29-505. Compensation of these officials is provided by law. Par. 29-519.

In Iowa and Missouri, the election officials are selected as for general elections. Par. 559, Iowa Code; Mo. Stats., Ann., Par. 10287.

In Illinois, Ohio, Nebraska, Minnesota, and Wisconsin, election officials are the same as those for the general election. Jones Ill. Stats., Ann., Par. 43.396; Page's Ohio General Code, Sec. 4785.68; Neb. Code, Par. 32-1139; Mason's Minn. Stats., Par. 302; Wisc. Stats., Ann., Par. 6.32.

In South Dakota, primary judges are appointed equally from the parties, and clerks are appointed without regard to party affiliations. So. Dak. Code, Sec. 16-0221. Compensation of both types of officers is paid by the county. Sec. 16-0231.

In Michigan, the Board of Election Inspectors is selected from the Board for General Elections. Ann. Stats., Par. 6.157.

In certain other States, the primary election is left to the party, and the officers or managers of such election are to be selected by the party, and paid by it. For example, Georgia Code, 1933, Pars. 34-3201 and 34-3216. South Carolina Code, 1932, Sec. 2352.

Therefore, in States such as those composing the North Central Division, where the primary election is controlled and supervised by the county, and the officers appointed and compensated by it, such officers would not be, as such, officers of any political party. Moreover, such an officer would not appear to occupy a "major county office." Consequently, such activities of committeemen would not appear to be prohibited.

In those States, however, where the primary election is entrusted to the party, the managers or clerks of the election would be officers or employees of the party, and such activity would be prohibited.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES

April 17, 1940.

The Secretary of the Interior.

My dear Mr. Secretary:

Further reference is made to your letter of February 21 in which you stated that Mr. Daniel A. Brady, employed by your Department under the Emergency Relief Appropriation Act at the Hickory Run Land Development Project, White Haven, Pa., has been elected to the office of school director in Kidder Township, Pa., for a term of 6 years without pay and that the Board of Directors "desire to appoint him as Secretary to the Board at $70 per annum." You asked whether the Hatch Act (Public, No. 252, 76th Cong., 1st sess., approved August 2, 1939) precludes him from occupying the positions mentioned.

In response to a request for further information I am now informed by your Department that Mr. Brady was elected to the office of school director at a general election on November 7, 1939, but "that he had not filed papers as a candidate and his name did not appear on the printed ballot but was written in by voters of Kidder Township without any campaigning by Mr. Brady."

The Hatch Act provides in pertinent part as follows:

> "SEC. 9. (a) * * * No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. * * *
>
> "(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

My predecessor has ruled (Circular No. 3301, October 26, 1939) that "being a candidate for elective office--Federal, State, or local," constitutes taking an active part in political management or in political campaigns within the meaning of section 9 of the Hatch Act, but that the statute does not apply to "holding a State or local office." If one acquires an elective office without being a candidate therefor and without actually taking any part in any political campaign or political management I must conclude that his acceptance and holding of the office is not to be

viewed differently than if it were an appointive office--the statute being directed at political activity rather than the holding of public office.

It is therefore my opinion upon the facts as stated that section 9 of the Hatch Act is inapplicable.

In this connection I deem it proper to mention, as does your Solicitor, that the holding of State or local office or employment by persons in the executive branch of the Government has been generally forbidden since January 17, 1873 (Executive Order No. 9 of that date), under penalty of removal--the employee's voluntary act being treated as a resignation of his Federal office. By special exceptions contained in the 1873 order and subsequent amendatory orders, however, some State or local positions, as, for example, positions on boards of education and school committees, may be filled by Federal employees provided there is no interference with regular official duties, as determined by the head of the affected department.

Respectfully,

ROBERT H. JACKSON.

UNITED STATES CIVIL SERVICE COMMISSION
Washington, D. C.

May 3, 1940

The Honorable
The Secretary of Agriculture

Sir:

The Commission refers to the Acting Director of Personnel's letter of April 19, 1940, File I-C.T.F., presenting an inquiry as to whether the restrictions of the Hatch Act are applicable to certain attorneys and counselors-at-law who represent the Regional Agricultural Credit Corporation of Wichita as its attorneys at Santa Fe, New Mexico.

It is noted that these attorneys perform legal service for the corporation only when requested to do so and are paid at the rate of Five Dollars ($5.00) per hour when actually employed, plus necessary expenses, and that neither of the attorneys has subscribed to an oath of office.

Section 9(a) of the Act of August 2, 1939, known as the Hatch Act, reads, in part, as follows:

> "No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects."

The Attorney General has officially ruled that Section 9 of the Hatch Act is not applicable to persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, such as attorneys, inspectors, appraisers and management brokers for the Home Owners' Loan Corporation and special fee attorneys for the Reconstruction Finance Corporation.

By direction of the Commission:

Very respectfully,

(Signed) L. A. Moyer

L. A. Moyer
Executive Director
and Chief Examiner

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

May 10, 1940

MEMORANDUM FOR MR. R. F. HENDRICKSON,
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to your memorandum of April 19 requesting the advice of this office as to whether the restrictions of the Hatch Act are applicable to Messrs. Seth and Montgomery, attorneys and counsellors at law, Santa Fe, New Mexico, who represent the Regional Agricultural Credit Corporation of Wichita, as its attorneys at Santa Fe, New Mexico. The question has been initiated by the Farm Credit Administration.

According to your memorandum, these attorneys perform legal services for the corporation only when requested to do so and are paid at the rate of $5 per hour when actually employed, plus necessary expenses. It is further stated that neither of the attorneys has subscribed to an oath of office.

The Regional Agricultural Credit Corporations, having been set up by the Reconstruction Finance Corporation, are managed by officers and agents appointed by the Farm Credit Administration under its rules and regulations. The expenses of the Corporations, according to the statute, are supervised and paid by the Reconstruction Finance Corporation. (12 U.S.C. sec. 1148) It is believed possible to answer the immediate question on existing interpretations, assuming, without determining, that the Regional Agricultural Credit Corporations are agencies of the United States within the meaning of Section 9 of the Hatch Act.

In his Circular No. 3301 of October 26, 1939, the Attorney General stated he had construed Section 9 of the Hatch Act as not applying to "Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, such as fee attorneys, inspectors, appraisers, and management brokers for the Home Owners Loan Corporation, and special fee attorneys for the Reconstruction Finance Corporation." Upon examination of correspondence exchanged between the Farm Credit Administration and the Regional Agricultural Credit Corporation at Santa Fe, New Mexico, it is revealed that the agreement covering the hourly payment to the attorneys in question for service

was authorized on the understanding that such payment constitutes a "fee," as is made apparent in a letter of November 7, 1938, of the Director, Regional Agricultural Credit Division.

In view of this fact, coupled with the fact that the attorneys have not subscribed to an oath of office, and apparently do not otherwise hold any formal appointment papers, it is the opinion of this office that they may be regarded as within the ruling of the Attorney General quoted above, and, therefore, that they are not subject to the restrictions of Section 9 of the Hatch Act.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES

June 6, 1940.

The Secretary of War.

My dear Mr. Secretary:

In your letter of May 2 you request my opinion whether certain officers and employees connected with the National Guard come within the provisions of section 9 of the Hatch Act (Public, No. 252, 76th Cong., 1st sess., approved August 2, 1939), relating to political activity by officers and employees in the executive branch of the Federal Government. You state that the questions have been presented to the War Department by the Adjutant General, State of Virginia, and by the United States Property and Disbursing Officer for Arkansas. You also indicate that other similar inquiries are expected.

From the time of the passage of the Hatch Act until recently a number of rulings, not amounting to formal opinions, were issued by this Department. As stated in Circular No. 3354 issued by me under date of April 6, 1940--

> "Interpretations of the act which have been previously issued by the Department indicate in a general way the scope of the act. These interpretations are not revoked. The practice of issuing rulings under the Hatch Act at the request of interested parties other than heads of executive departments is hereby discontinued."

It was not intended to countenance a continued and unlimited submission, even by the heads of the departments, of questions raised or doubts entertained merely by particular employees. A number of statutes in addition to the Hatch Act regulate the conduct of persons in the employment of the Federal Government. Generally, at least, it is the duty of persons who conceivably may come within the terms of the inhibitions so to shape their conduct as to avoid raising questions of the applicability to them of the statutory penalties. That this is the safe course is illustrated by the result in United States v. Dietrich, 126 Fed. 671, in which the court held a penal statute applicable to certain transactions by a United States Senator who professed to rely upon a contrary ruling by the Attorney General.

The penalty for violation of section 9 of the Hatch Act is removal from office, and whether there has been a violation is determinable by the head of the department or independent establishment concerned with making the removal. This Department has

no part in the administration of section 9 aside from responding to authorized requests for opinions which, I suppose, ordinarily would be submitted in connection with a contemplated removal--although I do not intend to suggest that this indicates the only circumstance in which such a request might properly be made.

I feel that I must ask you to excuse me from complying with the request contained in your letter of May 2, particularly since it is not accompanied by an opinion of the Judge Advocate General as is customary in connection with requests for opinions by the Attorney General under section 356 R. S. (U. S. C., title 5, sec. 304). While I have not looked into the status of the officers and employees here involved, it may be that you will derive some assistance from the following letter addressed to you by this Department under date of February 7, 1940, and which, as hereinbefore indicated, is not to be regarded as revoked:

> "Reference is made to your inquiry of January 11, 1940, regarding the application of the Hatch Act to Federal officers of the National Guard. You are hereby advised that the Department concurs in the opinion expressed by the Judge Advocate General, in that section 9 of the Hatch Act does not apply to officers of the National Guard of the United States as such except while in the services of the United States."

It appears proper to add that there is now being prepared in this Department a compilation of rulings heretofore made under the Hatch Act, which will be more comprehensive than the circulars of rulings heretofore issued and will be available to the heads of the departments and independent establishments when completed.

Respectfully,

ROBERT H. JACKSON

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

June 11, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to Mr. Gladmon's memorandum of April 26, 1940, requesting the opinion of this office concerning certain questions raised by the Farm Credit Administration as to the applicability of the Hatch Act to members of farm credit boards provided for by Section 5(b) of the Farm Credit Act of 1937 (12 U. S. C., sec. 640b).

As in other cases where advice is sought concerning the applicability of the Hatch Act, it is assumed, as is also apparently contemplated by Acting Governor Warburton of the Farm Credit Administration, in his memorandum of April 19, 1940, that there are contemplated only Sections 2 and 9 of the Hatch Act, since these are the principal sections affecting Federal employees.

Sections 2 and 9 of the Hatch Act are as follows:

"Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

* * * * * *

"Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in

the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purpose of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

"(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

Under the act of August 17, 1937, known as the Farm Credit Act of 1937, there were created twelve "farm credit districts," the twelve Federal Land Bank districts being virtually converted for this purpose. (12 U.S.C., sec. 640a.) There was established a farm credit board in each district, composed of seven members, of whom three are elected, three are appointed outright by the Governor of the Farm Credit Administration, and the seventh is appointed by the Governor from nominees presented to him. Of the three who are elected, known as "elected directors," one is chosen by the national farm loan associations and borrowers from Federal land banks through agencies set up under the Federal Farm Loan Act (12 U.S.C., sec. 801); one is chosen by the production credit associations of the district; and one is chosen by cooperatives, which are stockholders or subscribers to the guaranty fund of the regional bank for cooperatives in the district. Of the last four members, three are known as "district directors," two being appointed outright by the Governor, and the third, known as the "third district director," being chosen by the Governor from nominees presented by the national farm loan associations and borrowers through agencies, a selection being made from three nominees. The last member of the board, who is appointed by the Governor, is known as "director at large." See generally 12 U.S.C., sec. 640b. The district directors and the director at large may be removed by the Farm Credit Administration for cause. 12 U.S.C., sec. 831b. There is no provision for the removal of selected directors. All directors have terms of three years. 12 U.S.C., sec. 640g. The functions of the district boards include the employment of joint officers and employees of the Federal Land Bank, the Federal Intermediate Credit Bank, the Production Credit

Corporation, and the Regional Bank for Cooperatives in the district (hereafter referred to, for convenience, as "the four banks"). The compensation of such employees is fixed by the board and is paid by the land bank for the district, with reimbursement from the other three banks. 12 U.S.C., sec. 640r. The farm credit board for each district is ex officio the board of directors for the Federal Land Bank (12 U.S.C., sec. 677a), the Federal Intermediate Credit Bank (12 U.S.C., sec. 1022), the Production Credit Corporation (12 U.S.C., sec. 1131), and the Bank for Cooperatives (12 U.S.C., sec. 1134) of the district. The compensation of the board members is fixed by themselves, subject to the approval of the Farm Credit Administration. The board members are limited to compensation for thirty days in a year for any services rendered to the four banks, except for time spent in attendance at meetings of the board and at directors' meetings. 12 U.S.C., sec. 640j. Acting Governor Warburton's letter of April 19 states that, ordinarily, the directors perform no official services, except in connection with attendance at directors' meetings, with some exceptions. The members of the farm credit board are ineligible to be officers or employees of any of the four banks of the district. 12 U.S.C., sec. 640h.

It appears, therefore, that the farm credit board, as now constituted, is, in a sense, five boards in one, since, in addition to being a board of directors for each of the four banks in the district, it is an entity known as the farm credit board. This point is significant in the consideration of the historical development of this directorate for the farm credit system, which will be discussed later.

The four banks in each district controlled by the farm credit board may be classed, roughly, as those wholly owned by the United States (the Production Credit Corporation and the Federal Intermediate Credit Bank) and those owned, at least in part, privately (the Federal Land Bank and the Bank for Cooperatives). The Federal Intermediate Credit Bank for each district is chartered by the Farm Credit Administration (12 U.S.C., sec. 1021) and its stock is held by the United States (12 U.S.C., sec. 1061). Similarly, the Production Credit Corporation is organized and chartered by the Governor of the Farm Credit Administration (12 U.S.C., sec. 1131) and its stock is owned by the United States (12 U.S.C., sec. 1131b). As to the Federal Land Bank, on the other hand, while it is chartered by the Farm Credit Administration (12 U.S.C., sec. 672), its capital stock is only partially owned by the United States, since its stock may be held by national farm loan associations (12 U.S.C., sec. 721), by borrowers through agencies (12 U.S.C., sec. 802), or by direct borrowers (12 U.S.C., sec. 723). It has been recognized by the Supreme Court that the Federal land banks are not necessarily owned, "even chiefly," by the Government. Federal Land Bank v. Priddy, 295 U.S. 229, 232. Similarly, the banks for cooperatives,

although chartered by the Governor of the Farm Credit Administration (12 U.S.C., sec. 1134), are owned, in part, by the cooperative associations which borrow from them (12 U.S.C., sec. 1134k).

It is stated in the report of the Committee on Agriculture of the House of Representatives on the Farm Credit Act of 1937 (House Report No. 1288, 75th Congress, 1st Session) that, "With the exception of the third district director, the members of the farm credit board will be selected in substantially the same manner as the member of the Federal land bank board of directors are now chosen." This view was adopted by the Senate Committee on Banking and Currency (Senate Report No. 188). Beginning with the Federal Farm Loan Act of July 17, 1916 (39 Stat. 362), there was created a board of directors of each of the Federal land banks, to be composed of nine directors, six being local directors elected by national farm loan associations, and three being appointed by the Farm Loan Board to represent the "public interest." This provision was amended by the act of March 4, 1923 (42 Stat. 1474), reducing the number of directors to seven, and reducing to three the number selected by the national farm loan associations (and borrowers through agencies). The seventh director, or "director at large," was to be selected from nominees of the farm loan associations (and borrowers through agencies). The board was made ex officio directors for the newly-created Federal Intermediate Credit Bank for the district. 42 Stat. 1454. Under the Farm Credit Act of June 16, 1933 (48 Stat. 257, 269), the three local directors were apportioned, one each, among the national farm loan associations (and borrowers through agencies) and the new entities brought under that act; i.e., the production credit associations and the cooperatives borrowing from the Bank for Cooperatives of the region. It was further provided that the third district director should represent the farm loan associations and borrowers through agencies, and that only the first two of the district directors should represent the "public interest"; the seventh director, or "director at large," was to be appointed without qualification by the Governor of the Farm Credit Administration. The direction of the Bank for Cooperatives and of the Production Credit Corporation for the district was added to the ex officio duties of the board. As the Congressional Committees point out, the only structural change from that board to the present farm credit board was to require that the third district director be chosen from nominees of the farm loan associations and borrowers through agencies. The Farm Credit Act of 1937 does not designate any particular member of the board to represent the "public interest."

It appears, from the foregoing, that the directorate has been changed from time to time to represent the growth of the farm credit system, and also that it has evolved from a board, which, under the Federal Farm Loan Act of July 17, 1916, was dominated by directors chosen by the national farm loan associations, to a board as presently constituted, which represents a rather delicate balance

between the Government and the private interests involved, with the Government holding the largest single interest. The Federal land banks were declared to be "instrumentalities" of the United States in Smith v. Kansas City Title & Trust Co., 225 U.S. 180; and in Federal Land Bank v. Priddy, 295 U.S. 229; and all four banks here considered were declared to be governmental instrumentalities in M. G. West Co. v. Johnson, 66 P. (2d) 1211, in reliance on Smith v. Kansas City Title & Trust Co., supra. The main point of the decision in the West case was later overruled by Western Lithograph Co. v. State Board of Equalization, 78 P. (2d) 731, 737, but the value of the decision with respect to the nature of the four banks here considered was not disturbed. Other pertinent decisions have been rendered, principally on the question of the liability of the salaries of employees of these agencies to State income taxation, and, while the issue presented in these cases no longer exists by reason of the decision of the Supreme Court in Graves et al. v. New York ex rel. O'Keefe, 306 U.S. 466, the decisions remain for what they are worth in determining the nature of these instrumentalities. In Clinton v. State Tax Commission, 71 P. (2d) 857, the salaries of employees of the four banks were held to be subject to State income taxation upon the theory that these banks are not such Federal agencies as to demand immunity from taxation in this respect, especially in view of the fact that Congress, while rendering these agencies immune from taxation in many respects, did not render their employees specifically immune. A similar result as to a land bank officer was reached in Parker v. Mississippi State Tax Division, 174 So. 567, cert. den., 302 U.S. 742, although the case concedes that the land banks are Federal instrumentalities. In Martin v. Kenesson, 119 S.W. (2d) 644, it was held that the salary of an employee of a production credit corporation is immune from State taxation on the ground that the production credit corporations are Government agencies. Direct issue was taken with the case of Parker v. Mississippi State Tax Division, supra.

It is well established, therefore, that the four banks are "instrumentalities" of the United States. It is, of course, not necessary, for the purpose of the present discussion, to decide the status, under the Hatch Act, of each one of the four banks involved, since the problem here is to determine the status of the members of the farm credit boards. It may be necessary, however, to indicate the status of one or more of these banks in determining the status of the boards.

The broad terms of Section 2 of the Hatch Act not only included the employees of departments and agencies of the Government, as those terms may be strictly construed, but also the employees of corporations controlled by the United States or any agency thereof and the employees of corporations all the capital stock of which is owned by the United States or any agency thereof. Without determining for the moment the exact status of the farm credit board

itself, it is clear that, in its ex officio capacity as board of directors for the Federal Intermediate Credit Bank and for the Production Credit Corporation of its district, it is the board for corporations wholly owned by the United States. There would remain for determination the question whether the directors are "employed in any administrative position" by the corporations. It is suggested, in Acting Governor Warburton's memorandum, that the word "employed" is not ordinarily used to describe the relationship of directors to a corporation, and, hence, that section 2 of the act may be inapplicable to the farm credit boards, especially in view of the fact that section 2 is a criminal provision and is to be construed strictly. It is true, of course, that an expression of the kind used in Section 2 of the Hatch Act is not ordinarily used to describe the director of a corporation. However, the fact may not be overlooked that the Hatch Act is legislation of a very broad character and admits of the use only of expressions of the broadest type and intent. The Congress, in enacting the Hatch Act, could not have contemplated all situations and all circumstances which might arise, and also could not have considered each type of employee, officer, agent, director, administrator, etc., of the Government and its agencies, including corporations.

The legislative history of this act has been examined without revealing that consideration was given to the committee reports, or in the debates in Congress, to this question. However, the fact is clear that corporations are expressly included in section 2, indicating that Congress did contemplate that there are, in the structure of the Government, corporations utilized by the United States for the accomplishment of certain functions. Moreover, section 2 contains no express exemption of any officials and, unquestionably, it is applicable to many officers of higher importance in the Government than the members of the farm credit boards. If the term is broad enough to embrace such persons, occupying positions of great eminence in the Government, it is believed that it must be broad enough to include the officers of subordinate agencies or instrumentalities, even though, by reason of the nature of such instrumentalities or agencies, those officers happen to constitute boards of directors. Furthermore, it has generally been held that the expression "officers" of a corporation is broad enough to include its directors (46 C.J. 909; Lynip v. Alturas School Dist. (Calif.), 155 Pac. 109; State v. Whitmore (Ohio), 185 N.E. 547; Eastman v. State (Ohio), 1 N.E. (2d) 140; State ex rel. Matre v. Bergs (Wisc.), 217 N.W. 736; National Liberty Ins. Co. v. Bank of America, 214 N.Y.S. 643; United States Fidelity and Guaranty Co. v. Henderson (Texas), 293 S.W. 339; In re Peninsula Cut Stone Co. (Del.), 82 Atl. 689). Exceptions to this rule are recognized only in cases where the statute involved in some manner, by its context, or by enumeration in one place and a lack of enumeration in another, indicates that directors are not included within the scope of the term "officers." Shinners v. State ex rel. Laacke, 261 N.W. 880; Creighton v. Campbell, 149 Pac. 448. While it is conceded,

of course, that the term "officer" is not used in section 2, it appears that the terminology of section 2 presents an analogous situation and that the rule stated above may be adapted to this section. Section 2 of the Hatch Act contains no indication that directors of corporations are excluded from the scope of the expression "employed in any administrative position."

It is the opinion of this office, therefore, that Section 2 of the Hatch Act is applicable to members of the farm credit boards.

Section 9 of the Hatch Act refers, in its first sentence, to "any person employed in the executive branch of the Federal Government, or any agency or department thereof"; and, in its better known second sentence, it states that "No officer or employee in the executive branch of the Federal Government, or any agency or department thereof," may be active in political management or campaigns. Regarding first the restriction of the second sentence, it appears to be established by the citations given above with reference to section 2 of the act that a director is an "officer." It remains to be determined, therefore, whether a member of a farm credit board is in the executive branch of the Government or whether the board itself is an agency or department of the executive branch. The farm credit boards, as now constituted and as entities in addition to their ex officio position as board of directors for the four banks, are obviously important elements in the farm credit system. The board has grown, as is indicated previously, from a board dominated by private interests and controlling only one bank, to a unit in which the actual control is at least well balanced between the interests of the Government and the private interests involved. Three directors are chosen directly by the Governor, who is, of course, a Federal officer, and the third district director, while he is a narrow choice from persons selected by the national farm loan associations, is the designee of the Governor. With regard to the elected directors, it may, in a sense, be said that they are elected by private interests, but it does not appear that such interests are wholly private. One director is elected by farm loan associations and borrowers through agencies, which stand between the borrowers and the land banks. Both the national farm loan associations and the borrowers through agencies are stockholders in the Federal Land Bank, a Federal instrumentality. They are, then, exercising some voice in the ultimate conduct of the land banks and, not to be overlooked, in the wholly-Federally-owned Production Credit Corporation and Federal Intermediate Credit Bank. The production credit associations, which choose the second elected director, while they hold no stock in any Federal agency or instrumentality, are themselves the subject of stockholding by the Production Credit Corporation (12 U.S.C., sec. 1131e), giving the corporation an interest in the associations. The stock held by the Production Credit Corporation, it must be conceded, is Class A stock,

which is non-voting and, hence, the actual vote of the corporation will be cast by the Class B stockholders, who are farmer-borrowers and borrower-eligibles (12 U.S.C., sec. 1131e). The Production Credit Corporation, however, as long as it holds stock in the associations, has power to disapprove the appointment of any official of the association and to remove such official. Finally, as is clearly stated in the statute (12 U.S.C., sec. 640b), the third elected director is elected by cooperatives, which are stockholders or otherwise interested in the Regional Bank for Cooperatives in the district. With this interlocking of Federal and private interests, it would appear to be assuming too much to consider the elected directors to be merely representatives of private interests. Certainly, in their capacity as directors of the wholly-owned Federal banks, they owe a duty to the United States, at least as members of the whole board. Incidentally, it has been deemed to be necessary by Congress expressly to exempt the four banks and the farm credit boards from many provisions of law otherwise applicable to Federal agencies. It is significant, in this connection, that the expression, running through all previous legislation governing the selection of directors of the Federal land banks, to the effect that a part of the directors represent the "public interest," has been omitted from the present legislation, so that the statute does not expressly charge any part of the board with the "public interest."

It is the view of this office, therefore, that the farm credit boards are agencies of the United States and that, as such, their members are barred from active participation in political management or political campaigns under Section 9 of the Hatch Act. However, in accordance with the views stated by this office in recent opinions to you on Section 9 of the Hatch Act, where persons are employed on a per diem, when-actually-employed basis and are compensated only when actually serving the Government, this restriction of the Hatch Act is applicable only during the course of such active employment, as a result of the ruling of the Attorney General in his Circular No. 3301. This ruling, it is believed, is for application to the members of the farm credit boards, since their service is of intermittent duration and since they are compensated only when actually rendering such service.

It is necessary to consider two points raised by the Acting Governor of the Farm Credit Administration, which would suggest an opposite conclusion. The Acting Governor suggests that the express inclusion in section 2 of the act, in the term "agency of the United States," of corporations of various types implies an intent to exclude corporations from the scope of section 9, where the word "agency" is used without the express inclusion of such corporations. It is suggested, therefore, that employees of Government corporations may not be subject to section 9 of the act. The Attorney General, however, has held that Section 9 of the Hatch Act is

applicable to corporations of the United States, such as the Reconstruction Finance Corporation and the Home Owners' Loan Corporation (Circular No. 3301 of the Attorney General). Moreover, it may be argued that the express inclusion of various types of corporations in section 2 was merely a precautionary measure to insure the inclusion in that criminal section of the employees of certain corporations which might otherwise be held not to be agencies of the United States, whereas the employees of a Government corporation, which is without question "an agency of the United States," would be included in the civil provisions of section 9 of the act without the necessity of the express description. Furthermore, for the purposes of this opinion, it is not necessary to consider the status of corporations under section 9, since the status of the members of the farm credit boards under section 9 has been determined above without reliance upon the status of the corporations of which the boards constitute the directorates.

The second objection is that, in providing, in Section 9 of of the Hatch Act, the sanction of the withdrawal of appropriated funds for the payment of compensation, Congress was considering only persons paid from appropriated funds of the United States. However, section 9(b), in fact, provides a double penalty -- i.e., immediate removal from a position and the withdrawal of compensation -- and it appears that the former sanction can be imposed even if circumstances are such that the latter sanction can not be imposed.

There remains the final consideration as to whether directors of the farm credit boards are within the scope of the first sentence of section 9 with reference to the use of official authority or influence. However, there is no indication that the scope of the first sentence of section 9 is any less than that of the second sentence of section 9, and no distinction has been drawn between them by the Attorney General in his interpretation. Moreover, the exceptions stated in the latter part of section 9(a), including the President, the Vice President, and heads of departments, are exceptions from "this section," embracing both the first and second sentences. Relying, then, on the argument that the farm credit boards, as subordinate agencies of the Government, are no less "employed" than the President and the heads of departments, it is the opinion of this office that the first sentence of section 9 is also applicable to the directors of the farm credit boards.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

June 17, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to Mr. Gladmon's memorandum of May 28, 1940, requesting the advice of this office as to the applicability of the Hatch Act to Mr. Wyllys G. Stanton, an employee of the Federal Land Bank at St. Louis, who has been elected as a member of a school board. The specific inquiry is as to whether Mr. Stanton will be required to resign from the school board in order to comply with the Hatch Act.

Section 9 of the Hatch Act provides that "No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns." The employees of Federal land banks are appointed by the farm credit board for each farm credit district, as ex officio directors of the land banks, and their compensation is fixed by the boards of directors, subject to the approval of the Farm Credit Administration. 12 U. S. C., sec. 676, 677a. Their compensation is paid from earnings of the Federal land banks, and it has been held by the Comptroller General that such compensation does not flow from appropriated funds, so that a land bank employee might also hold a clearly Federal position without violating the dual compensation act of May 10, 1916, 39 Stat. 120, as amended. See A-74111, July 17, 1936; 17 Comp. Gen. 1055. Although the Federal land banks are Federal instrumentalities, they are owned partially in private, and it has been held that they need not be even chiefly owned by the United States. Federal Land Bank v. Priddy, 295 U. S. 229. The Federal land banks are, of course, created for the purpose of making loans and extending credit in various ways, with farms as security. 12 U. S. C., sec. 781. The national farm loan associations and other borrowers from the Federal land banks, which are, or represent, only private interests, are required to take and hold stock in the land banks, which holdings, as indicated previously, may exceed in amount the Federal interest in the banks. The board controlling a given bank, as indicated in our previous opinion to you of June 11, 1940 (Op. Sol. No. 2518), is the farm credit board for the district, which is selected in such a manner that it becomes an agency of the United States within the meaning of Section 9 of

the Hatch Act. The board, however, in addition to its status as the farm credit board for the district, is not only a board for the land bank but also for the other three banks in the district, including the wholly Federally-owned Production Credit Corporation and the Intermediate Credit Bank. The land bank, therefore, while it may be directed by a board which has status as an agency of the executive branch of the Government, is, in part, owned by and of service to private interests.

It is the opinion of this office, therefore, that, primarily because of the extent of the private interests involved, the Federal land banks are not agencies or departments of the executive branch of the Federal Government within the meaning of Section 9 of the Hatch Act, and that an employee thereof is not barred by said section from political activity.

It is pertinent to note here that the Farm Credit Administration, while expressing doubt as to the application of section 9 to employees of Federal land banks, has declared that, as a matter of administrative policy, employees of the land banks should refrain from engaging in any political activities that are prohibited to employees of the Federal Government. See letter of the Acting Governor of March 9, 1940, and Section 503.50 of the Farm Credit Administration Administrative Manual, copies of which are attached. It is understood informally, however, that the Governor has allowed a waiver of the regulation in the case of Mr. Stanton, in view of the fact that he filed for the election in question prior to the receipt of notice of the regulations prohibiting such activity.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

Attachments.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

July 24, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to your memorandum of July 9, 1940, with reference to the interpretation of Section 9(b) of the Hatch Act as it affects the possibility of permitting employees to take accumulated and accrued annual leave, after it has been determined that they must be separated from the service for a violation of Section 9(a) of the Hatch Act (18 U. S. C., sec. 61h).

Your memorandum refers to the memorandum of this office of June 26, 1940, wherein it was recommended that Mr. H. J. Lemire, Associate Attorney of this office at Denver, Colorado, be removed from his position, effective June 24, 1940, for violating the Hatch Act, and you state that it appears from the file that Mr. Lemire has taken the position that he is entitled to be paid for the period of his accumulated and accrued annual leave, which would require a later separation.

As indicated by you, our recommendation of June 26, 1940, in the case of Mr. Lemire, was in accord with our opinions of November 16, 1939 (Op. Sol. No. 1889), and April 17, 1940 (Op. Sol. No. 2365), the latter opinion citing the decision of the Acting Comptroller General of March 29, 1940 (B-9118), 19 Comp. Gen. 834. Your memorandum analyzes the decision of the Acting Comptroller General cited and suggests that, since the Acting Comptroller General found that he would authorize payment of compensation to the employee in question to a later date, even though the employee could have been suspended from his position at an earlier date, in compliance with Section 9(b) of the Hatch Act, "it would appear that the Department has the right to accept a resignation or remove an employee immediately upon receipt of advice that he is a candidate for elective office, but that possibly such action is not mandatory in the case of an employee who has unused annual leave to his credit." You suggest, therefore, that there is a question as to whether the definition of the word "immediately," in Section 9(b) of the Hatch Act, would permit the granting of part or all of the unused annual leave, and that some members of your staff have expressed the belief that employees so separated from the service should be entitled to the benefit of annual leave accrued

prior to the violation. You state that it has been suggested, therefore, in view of the importance of the matter, that a ruling be obtained from the Attorney General in order that there may be no question on this issue, and that, if it is felt that such action would be desirable, you wish this office to prepare the question for submission to the Attorney General for his opinion.

Section 9(b) of the Hatch Act provides:

> "Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

In the opinion of this office of November 16, 1939, supra, it was held that steps should be taken "at once" to terminate the employment of Mr. Joe B. Cooper, the employee involved, from the service and that, consequently, his unused leave, as of the date of separation, must be forfeited. This opinion was based on the principle that annual leave is granted in kind only and that once separated from the service, regardless of the cause, an employee no longer has a status under which he may be granted leave. It was concluded, therefore, that "Inasmuch as Mr. Cooper has apparently violated the provisions of the act of August 2, 1939, supra, he is not permitted, under the terms of that act, to retain his present position until he has had an opportunity to use his accrued leave." In the opinion of April 17, 1940, supra, a further question was raised, with regard to the status of Mr. Cooper, as to whether, although he might not be paid for his accumulated annual leave, he might be granted "service credit" for the period which such leave would have covered. An accidental feature of this particular case was that, because of Section 32 of the Emergency Relief Appropriation Act of 1939, which prohibited payment of compensation under that act in any event while an employee was engaged in certain political activities, Mr. Cooper had received no pay after beginning such activity, even though his separation date had been fixed to allow the time covered by his annual leave, notwithstanding the opinion of this office of November 16, 1939, supra. In the case of Mr. Cooper, therefore, the Department had not, in fact, separated him from the service immediately, but had actually allowed the period of his annual leave before effecting termination. Under those circumstances, it had to be concluded that there was no authority retroactively to change the termination date of Mr. Cooper so as to cut off his service credit. It was stated, however, that, as to any similar case pending or occurring in the future, the separation date of the employee is to be fixed immediately following the determination that there has been prohibited political activity, without allowance for annual leave, in any form, beyond the separation date so fixed. It was also concluded

that, "while such termination need not date from the time at which the activity was actually begun, it should be effected as of an immediate date when the fact has been established that such activity has occurred." It was in this connection that the decision of the Acting Comptroller General of March 29, 1940 (B-9118), 19 Comp. Gen. 834, was cited.

The decision of the Acting Comptroller General, in 19 Comp. Gen. 834, supra, involved an employee of the Farm Credit Administration who submitted his resignation to become effective March 6, 1940, at the expiration of his annual leave, the employee stating at the time of such submission that he might become a candidate for election as representative to Congress for his district. On March 1, 1940, being then on leave, he telegraphed that he had filed as a candidate on February 27, 1940. The Department took no action to change the date of his separation. The question, therefore, was whether the employee could receive compensation to the date originally fixed for his separation. The Acting Comptroller General stated that the provisions of section 9(b) of the statute are not self-executing and that administrative or executive action is required in order to remove an offending officer or employee. He stated, therefore, that the prohibition of section 9(b) against the further receipt of compensation operates only after removal. In declaring that section 9(b) makes it mandatory to remove an employee immediately upon his violation of the statute, the Acting Comptroller General cited his previous decision of October 28, 1939 (B-3361), in which it was held, quoting from Myers v. Dunn, 104 S. W. 352:

> "The construction given generally by the courts to the words 'immediately' and 'forthwith,' whether occurring in contracts or statutes, is that the act referred to is to be performed within such convenient time as is reasonably requisite, and what is a reasonable time is to be determined by the facts of the particular case at hand."

The decision in 19 Comp. Gen. 834, 836, then concluded as follows:

> "While it would appear that under the interpretation of the statute by the Attorney General this employee could have been removed on March 1, 1940, date of his telegram advising that he had filed as a candidate for an elective office, or as soon thereafter as reasonably requisite to accomplish administratively his removal from his position, without regard to any accrued or unused leave, it is understood the fact is he was not so removed by administrative action, but that his services otherwise officially terminated March 6, 1940, the effective date of his resignation which had been tendered and accepted by administrative action prior to the date he filed as a candidate.

"You are advised, on the facts presented that if the former employee is not indebted to the United States, compensation otherwise accruing may be paid to him through March 6, 1940, date of his separation from the service by resignation."

As stated by the Acting Comptroller General, the provisions of section 9(b) of the statute are not self-executing. As also stated by him, it is the administrative responsibility of this Department to detect a violation of the act by an employee of the Department and to take action immediately to remove the employee. The Acting Comptroller General obviously grants that "immediately" does not mean instantaneously upon the discovery of the violation, but contemplates a reasonable period for the administrative accomplishment of the removal. In the case of the particular employee involved in the decision quoted above, notice was received on March 1, 1940, of the actual violation of the act. The fact was, as the Acting Comptroller General stated, that the Department did not take action, and, hence, the separation date of March 6 was allowed to stand. An interval of five days, between the date of the discovery of the violation of the statute and the date of the separation of the offending employee from the service, was thus permitted in that case. All that the Acting Comptroller General decided was that, since the Department did not separate the employee as early as March 1, although it could have done so, the actual separation date, as it was allowed to stand by the Department, would be accepted by him in connection with the payment of the compensation of the employee. In that particular case, the interval of five days obviously did not constitute such a period as would have justified the General Accounting Office in investigating whether the Department arbitrarily or capriciously failed to carry out its duty, under the statute, of "immediate" separation. In view of the fact that the Acting Comptroller General does not have the primary responsibility of interpreting or enforcing the Hatch Act, but only has the authority to see to it that compensation is paid in accordance with the proper enforcement of that act, there does not appear to be a sufficient basis for assuming that the Acting Comptroller General meant to imply that the Department possesses discretionary authority to decide whether an employee who violates Section 9(a) of the Hatch Act shall be "immediately removed" from his position or whether such employee shall be permitted to take his accumulated and accrued annual leave prior to his removal. It seems to this office that the Acting Comptroller General was implying no more than that, since the Department is the enforcer of the act with respect to its employees, the General Accounting Office is not required to withhold compensation from an employee for a period of five days during which the Department retained the employee under appointment after discovering his violation of the statute.

Moreover, it appears that, if the Department were to adopt any plan of postponing the termination of employees to allow leave, in carrying out Section 9(b) of the Hatch Act, such practice would lead to absurd results. Section 9(b) states that an employee violating the section shall be "immediately removed from the position or office held by him" and thereafter is to receive no compensation in such position. Suppose, for example, an employee is found to have violated Section 9 of the Hatch Act, and the employee has to his credit 75 days of current accrued and accumulated annual leave. Under the interpretation urged, it would be allowable to retain such an employee on the rolls for approximately three months after it had been determined that he had violated the Hatch Act. It could hardly be said that the Department had removed this employee from his position "immediately," and that, having taken such immediate action, the Department had not thereafter allowed the employee to receive any compensation from his position. It is true, of course, that the inhibition against compensation operates only after the employee actually has been removed. This fact is emphasized by the Acting Comptroller General in 19 Comp. Gen. 834, supra. However, the fact that Congress saw fit to place this additional requirement in the act serves to emphasize the intent of Congress that an employee who has violated the act must suffer quick and certain punishment. If an employee is retained on the rolls of the Department and is paid the compensation attached to his position for one, two, or three months, or more, after he is known to have violated Section 9 of the Hatch Act, it does not appear that any legal argument could be made to support the view that the employee was "immediately" removed from his position.

With regard, therefore, to the suggestion that this question be submitted to the Attorney General for an opinion, it is my belief that the matter does not present any doubtful legal issue.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

2636

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

July 29, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to the memorandum of your office of July 10, 1940, requesting an interpretation from this office with regard to a question submitted by the Governor of the Farm Credit Administration as to whether a member of a farm credit board is prohibited by the Hatch Act from serving on the State finance committee for a political party.

There was forwarded a copy of a letter from Mr. M. L. Urann, a member of the Farm Credit Board of Springfield, Massachusetts, addressed to the Governor of the Farm Credit Administration, wherein he states that he has been asked to serve on the State finance committee for a political party, covering, as he presumes, the State and national campaigns. Mr. Urann points out that, while he receives compensation on three days a month, he is continuously a director and may be called on for attendance at special meetings or other work at any time. Mr. Urann states that there is a real and responsible job to be done in the Farm Credit Administration and that he desires that nothing should interfere with his work on the Farm Credit Board.

As stated in a circular of June 15, 1940, issued by the Governor of the Farm Credit Administration, following the opinion of this office of June 11, 1940 (Op. Sol. No. 2518), the restrictions of Section 9 of the Hatch Act are applicable to a member of the Farm Credit Board only as to those days on which he serves as a board member and receives compensation for such services.

In the opinion of this office of June 11, 1940, supra, persons employed as members of the farm credit boards were analogized to per diem employees on a "when actually employed" basis, who were declared by the Attorney General, in his Circular No. 3301 of October 26, 1939, to be subject to Section 9 of the Hatch Act only during the course of their active employment. The obvious fact remains, however, that an employee may not engage in any political activity, as defined by the act, during his active employment. Certain types of political "activity" have no existence or substance except while the persons are performing some tangible act,

and this category would include speech-making, assisting at the polls, soliciting voters, participating in a parade, etc. Other types of activity are those which are not necessarily accompanied by continuous action by the person. These include candidacy and the holding of office in a political party. Since it is held by the Attorney General, and also provided in Personnel Circular No. 84, that employees of the Department may not be candidates for elective office or hold office in a political party or club, it is the view of this office that a farm credit board member, or any employee coming under the "per diem rule" enunciated previously, may not be a candidate or officer of a political party at any time while serving the United States.

Clearly, this means that a member of a farm credit board may not be a candidate or hold office in a political party or club, unless such activity occurs entirely within a period of inactivity as to Federal work. If the individual begins to perform service for the Federal Government, he must resign his political office or withdraw his candidacy prior to entering into active duty. It is also apparent that the law would not contemplate a mere subterfuge of resigning a political office and entering upon brief active Federal duty, only to resume such political activity immediately upon cessation of Federal service. It is assumed, of course, that an employee of the Department would not contemplate such a course of action.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

Attachment

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

August 28, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to your memorandum of August 15, 1940, requesting the advice of this office as to the application of the Hatch Act (18 U. S. C., sec. 61h), and the Emergency Relief Appropriation Act, fiscal year 1941 (Public Resolution No. 88, 76th Congress), to the case of an employee of the Farm Security Administration, whose husband is a candidate for public office.

The facts in this case are stated in the following telegram from the Regional Director of Region 9 of the Farm Security Administration:

> "RE DEPT PERSONNEL CIRCULAR NUMBER 84 HUSBAND OF ONE OF OUR BRANCH SUPERVISORS IN ARIZONA HAS ANNOUNCED CANDIDACY FOR STATE LEGISLATURE STOP PLEASE ADVISE WHETHER NECESSARY FOR OUR EMPLOYEE TO RESIGN STOP HAVE NO INDICATION THAT OUR EMPLOYEE IS IN ANY WAY CONNECTED WITH HUSBAND CANDIDACY OR IS MISUSING HER POSITION IN ANY WAY STOP PLEASE ADVISE."

Section 9 of the Hatch Act states that no officer or employee "shall take any active part in political management or in political campaigns." Section 30(a) of the Emergency Relief Appropriation Act, fiscal year 1941, provides that persons employed in an administrative or supervisory capacity under the funds appropriated by the joint resolution "shall take no active part, directly or indirectly, in political management or in political campaigns or in political conventions." Section 15 of the Hatch Act, as added by Public, No. 753, 76th Congress, provides that, in the application of section 9 of the act, the determinations of the Civil Service Commission with regard to violations of the civil service rules of like force existing at the effective date of the act are to be applied. Form 1236 of the Civil Service Commission - "Political Activity and Political Assessments" issued September 1939, in paragraph 12, states that political activity by indirection is prohibited by the civil service rules, being such activity as acting through an agent, officer, or employee chosen by a person or subject to his control. The form further states:

"Employees are therefore accountable for political activities by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly.

* * * * * *

"This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative, and in his or her own behalf."

In the absence of any evidence that the candidacy for office of the husband of an employee in any way reflects political activity or effort on her part, there is no violation either of Section 9 of the Hatch Act or of Section 30(a) of the Emergency Relief Appropriation Act, fiscal year 1941. In the instant case, no such evidence now appears.

Very truly yours,

(Signed) C. M. Boyle

Acting Solicitor.

UNITED STATES CIVIL SERVICE COMMISSION
Washington, D. C.

September 17, 1940

Director of Personnel
U. S. Department of Agriculture
Washington, D. C.

Dear Sir:

This is in reference to your recent letter in which you inquire as to whether or not local attorneys handling foreclosures and other matters for the Federal Land Bank of Wichita, Kansas, on a fee basis, are prohibited by Section 5(a) of the Act of July 19, 1940, from making political contributions while representing the land bank.

It is the opinion of this Commission that attorneys employed on a fee basis are not within the class intended to be covered by Section 5(a). Accordingly, there would be no restriction, under the terms of the section referred to, upon their right to make political contributions while representing the land bank.

Very truly yours,

Harry B. Mitchell
President

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

September 20, 1940

MEMORANDUM FOR MR. ROY. F. HENDRICKSON
Director of Personnel

Dear Mr. Hendrickson:

Reference is made to your memorandum of August 27, 1940, requesting our advice concerning the application of section 5(a) of the act of July 19, 1940 (Public No. 753, 76th Congress) to local attorneys handling foreclosures and other matters for the Federal Land Bank at Wichita, Kansas, on a fee basis. You enclose a memorandum from the Acting Governor of the Farm Credit Administration, dated August 12, 1940, to which is attached a copy of a letter from the Administration office at Wichita.

Section 5(a) of Public No. 753, supra, provides that no person or firm contracting with the United States or any department or agency thereof, for rendition of personal services, furnishing materials or supplies, or selling any land or building to the United States, may make political contributions during the period of negotiation for or the performance of such contract, if payment for such work "is to be made in whole or in part from funds appropriated by the Congress." In the opinion of this office of June 17, 1940, addressed to you (Op. Sol. No. 2543), it was pointed out that an employee paid from funds of a Federal land bank is not receiving compensation from appropriated funds, so that such person may also be an employee of the United States without violating the dual-compensation act of May 10, 1916 (5 U.S.C. Sec. 58). Such a conclusion is also reached in decisions of the Comptroller General A-74111, July 17, 1936, and 17 Comp. Gen. 1055. The prohibition of the act of May 10, 1916, relates to any money "appropriated by this or any other act," and for this purpose that act and the provision under discussion are to be given similar construction.

It is the opinion of this office, therefore, that fees paid to attorneys for work performed for the Federal Land Bank and paid from funds of the Federal Land Bank are not being paid from "funds appropriated by the Congress" within the meaning of section 5(a) of Public No. 753, supra. Accordingly, there would appear to be no violation of said section should these attorneys make political contributions while engaged in work for the land bank.

It must be recognized, of course, that the statute here in question is a criminal statute, so that the opinion of this office must be taken in the strictest sense as advisory and not as a safeguard in the event prosecution should ensue.

Very truly yours,

(Signed) C. W. Boyle

Acting Solicitor

Enclosure

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

October 10, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to Mr. Gladmon's memorandum of August 24, 1940, raising the question as to whether employees of this Department are prohibited by the Hatch Act, 18 U.S.C., sec. 61c, as amended by Public, No. 753, 76th Congress, from making voluntary contributions to political campaign funds.

You state that you understand that the original Hatch Act did not prohibit such contributions, but that, in view of the wording of Section 5(a) of Public, No. 753, supra, you will appreciate advice as to whether Federal employees are thereby prohibited from making such contributions.

Section 5(a) of Public, No. 753, supra, is as follows:

"No person or firm entering into any contract with the United States or any department or agency thereof, either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof, or selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, shall, during the period of negotiation for, or performance under such contract or furnishing of material, supplies, equipment, land, or buildings, directly, or indirectly, make any contribution of money or any other thing of value, or promise expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; nor shall any person knowingly solicit any such contribution from any such person or firm, for any such purpose during any such period. Any person who violates the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than five years."

The language in section 5(a), which seems to suggest that employees might be affected, consists of the words "person*** entering into any contract***either for the rendition of personal services or furnishing any material, supplies, or equipment***." Without reference to the legislative history involved, the quick inference can be taken that Congress was contemplating the ordinary course of contract business of the United States, and was not considering officers and employees of the United States, especially in view of the numerous provisions of law, including the Hatch Act itself, governing political activities and political contributions on the part of officers and employees. Form 1236 of the Civil Service Commission - "Political Activity and Political Assessments," in existence at the time of the passage of Public No. 753, supra, provides (see page 7) that an employee may make political contributions "to any committee, organization or person not employed by the United States," so long as he does not solicit or receive such contributions.

A general view of authorities indicates that the condition of employment or the relationship of employer and employee is quite commonly referred to as a "contract," being a contract which is normally terminable at the will of either party, in the absence of express agreement that the parties are bound for a term. 6 L.R.A. 895; 18 L.R.A. 509; 101 A.L.R. 1007. It is also a general rule that, even where the hiring is at a stipulated sum per year, month, week, etc., the hiring is nevertheless indefinite and terminable at will. Reasnor v. Wattis, Ritter Co., (W. Va.) 80 S.E. 839; 51 L.R.A. (N.S.) 629. Hence, while it may not be stated categorically that the relationship of employment is not a contract in any sense, yet, it is an arrangement or agreement which is terminable at the will of either party, in the normal case, and thus lacks the mutual obligation of performance found, certainly, in usual contracts arising out of bilateral promises. Moreover, in the law in question, contracts "for the rendition of personal services" are treated in the same context with contracts for the furnishing of materials, supplies or equipment, sale of land, etc., which latter contracts, unquestionably, are only those that are binding in the ordinary sense. It may be concluded, therefore, strictly from the construction of the law itself, that Congress did not intend to affect the "contract" of employment.

No provision similar to section 5(a) was included in Senate bill No. 3046, later Public, No. 753, when originally introduced. Early in the debate a provision largely similar to section 5(a) was suggested by Senator Prentiss M. Brown (Vol. 86, Congressional Record, March 4, 1940, page 4020), but it apparently was not actually offered at that time as an amendment. Senator Hatch, in further debate on the bill, declared that the bill (not yet containing section 5(a)) would have no effect on the making of voluntary contributions by employees (page 4027). Senator Brown later

offered an amendment which, among other things, would have authorized expressly voluntary contributions on the part of Government employees (March 15, 1940, page 4521), but Senator Hatch declared that, in his opinion, the amendment offered by Senator Brown was not necessary in that it covered things not prohibited by law (page 4523). Further in the course of the debate, Senator Hatch cited the civil service ruling that voluntary contributions are lawful (page 4542). At page 4587, Senator Byrd offered the amendment, which is now section 5(a), but which did not contain the expression "personal services" now appearing in section 5(a). In discussing his proposed amendment, Mr. Byrd states:

> "I wish to say to the Senator from New Mexico [Mr. Hatch] that the amendment I have just offered is not in any way an amendment hostile to his bill. It is in complete harmony with the proposed legislation that we should prohibit those who have governmental contracts, contractors who deal with the Government, contractors who make great sums out of governmental contracts, from making contributions to political parties for any purpose whatsoever."

The amendment, with modifications here immaterial, was adopted, after receiving Senator Hatch's endorsement (page 4588), and was passed by the Senate as part of the bill (page 4594). The House Committee on the Judiciary reported the bill with the insertion, in the section in question, of the expression "for the rendition of personal services," with the following comment:

> "This section of the Senate bill corresponds to section 5(a) of the reported bill. The committee print contained the same provision of the Senate bill except that in the committee print the prohibitions did not apply against rendition of personal services. The Committee on the Judiciary amended section 5(a) and reported it to make the prohibition applicable to contracts for personal services and, therefore, in accordance with the Senate bill." [House Report No. 2376, 76th Congress, 3d Session.]

It will be noted that the principal force of this change is in the introduction of the word "personal" as modifying the word "services." After the bill had passed the House (Vol. 86, Congressional Record, page 14281), it was adopted in the Senate as amended by the House, without further amendment (page 14359).

It is the conclusion of this office that the legislative intent in enacting this bill was to affect only contracts in the usually accepted sense of the word, and not to affect officers and employees. The reasons motivating the House Committee to insert the word "personal" into the bill are stated, but it is apparent from its statement that the committee did not consider that it had

made a serious change or extension in the bill as it passed the Senate. The Senate, likewise, did not indicate that it recognized any serious change in passing the bill as amended by the House. It is believed, therefore, that the insertion of the word "personal" was intended to assure that the section would apply to actual binding contracts where the subject matter is the performing of services by persons divorced from tangible products or things resulting from the contract.

You are advised, therefore, that, in the opinion of this office, Section 5(a) of Public, No. 753, supra, does not prevent voluntary contributions by employees of the Department for political purposes, within the limits of other law. It must be remembered, of course, that this provision is criminal in nature, and that it is for definitive interpretation by the courts.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

October 25, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON
Director of Personnel.

Dear Mr. Hendrickson:

Reference is made to your memorandum of October 14, 1940, requesting advice as to whether the Hatch Act, 18 U.S.C., sec. 61, is applicable to secretary-treasurers of national farm loan associations. You enclose a copy of a letter, dated October 8, 1940, from the General Counsel, Farm Credit Administration. The letter states, in part, as follows:

> "National farm loan associations are organized pursuant to section 7 of the Federal Farm Loan Act (12 U.S.C. 711-723). All of the stock of national farm loan associations is owned by farmers. The United States Government has no money invested in these associations."

National farm loan associations are organized by persons desiring to borrow money from Federal land banks under the terms of the Federal Farm Loan Act (12 U.S.C., sec. 711). The directors of an association are elected by the shareholders (12 U.S.C., sec. 712). The directors and all officers, except the secretary-treasurer, serve without compensation, unless the payment of salaries to them is approved by the Farm Credit Administration (12 U.S.C., sec. 713). Expenses of the national farm loan associations are paid from their general funds (12 U.S.C., sec. 715). The funds of the association are made up of the stock subscriptions of the members, and, when other funds are not available, the board of directors of the association may assess the members in proportion to the amount of stock held by each, or it may secure an advance from the Federal land banks in the nature of a loan (12 U.S.C., sec. 715). All stock is held by borrowers (12 U.S.C., sec. 733). The associations, in order to secure loans for the members from the Federal land banks, are required to subscribe to the capital stock of such banks (12 U.S.C., sec. 721).

This office has held that section 9 of the Hatch Act, 18 U.S.C., sec. 61h, is not applicable to officers and employees of Federal land banks, largely on the theory that ownership of such banks may lie in private interests. Op. Sol. No. 2543, June 17, 1940. It is

clear, therefore, that, since the United States is in no way interested as an owner in the national farm loan associations, section 9 is not applicable to officers and employees of such associations.

With respect to Section 2 of the Hatch Act, 18 U.S.C., sec. 61a, which is the other section principally affecting Federal employees, it is equally clear that said section is not applicable to officers and employees of national farm loan associations, unless such associations may be said to be controlled by the United States or an agency thereof, within the meaning of that section. The Farm Credit Administration may make rules and regulations for the "efficient execution" of the Federal Farm Loan Act, under which the associations are created (12 U.S.C., sec. 665); may permit the payment of salaries to all officers and employees of the associations; has power to require reports of the condition of any association and to examine any association (12 U.S.C., sec. 831(e)); and is authorized to exercise general supervisory authority over the associations (12 U.S.C., sec. 831(i)). However, the associations appear generally to conduct their business under the actual control of a board of directors selected by the private shareholders, without requiring approval by the Farm Credit Administration. It is the opinion of this office, therefore, that section 2 is not applicable to the national farm loan associations.

Very truly yours,

(Signed) Mastin G. White

Solicitor.

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SOLICITOR
Washington, D. C.

October 26, 1940

MEMORANDUM FOR MR. ROY F. HENDRICKSON,
Director of Personnel

Dear Mr. Hendrickson:

Reference is made to your memorandum of September 7, 1940, requesting the advice of this office as to whether the Hatch Act (18 U. S. C. 61c) is applicable to officers and employees of a production credit association. Your memorandum encloses a copy of a letter from the Governor of the Farm Credit Administration, dated August 30, 1940.

The memorandum of the Farm Credit Administration, supra, describes the production credit associations as follows:

> "Production credit associations are organized pursuant to section 20 of the Farm Credit Act of 1933 (12 U. S. C. 1131d; 48 Stat. 259).
>
> "A part of the capital stock of each production credit association is owned by farmer-borrowers and a part is owned by the production credit corporation of the district. Roughly, 18 percent of the capital of the production credit associations is owned by farmers and 82 percent is owned by the production credit corporations. The production credit corporations are wholly owned by the United States Government.
>
> "Production credit association stock owned by the production credit corporations is nonvoting, but while a corporation owns stock in any association, the appointment or election of directors, the secretary-treasurer, and the loan committee of the association are subject to the approval of the president of the production credit corporation and during such time any such director, secretary-treasurer, or other officer may, at any time, be removed by the president of the production credit corporation."

Since your memorandum requests advice concerning the application generally of the Hatch Act, it will be necessary to consider Sections 2 and 9, since these are the sections principally

affecting Federal employees. The portions of these sections here pertinent, as amended by Public, No. 753, 76th Congress, are as follows:

> "Sec. 2. It shall be unlawful for (1) any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), *** to use his official authority for the purpose of interfering with, or affecting, the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner from any Territory or insular possession."
>
> * * * * * * * * *
>
> "Sec. 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns.***."

It is found, as is stated in the memorandum of the Farm Credit Administration, that the stock of the production credit associations is divided into two classes: (1) Class A stock, which is to be held by the production credit corporations (which are wholly owned by the United States), but which may be purchased and held by investors, and (2) Class B stock, purchasable only by farmer-borrowers and borrower-eligibles. Class B stock is to be converted into Class A stock within two years after the holder of such Class B stock has ceased to be a borrower. Only Class B stock carries voting rights. So long as any production credit corporation holds stock in the association, the appointment or election of directors, the secretary-treasurer and the loan committee of the association is subject to the approval of the production credit corporation, and any director or officer may be removed by the production credit corporation during such time. 12 U.S.C., sec. 1131e.

While, clearly, the production credit corporation for the district has very real control in the matters of the production credit association, especially while a stockholder in the association, yet the ownership of the association does not need to be, even principally, by the production credit corporation on behalf of the

United States. According to the statistics stated by the Farm Credit Administration, the production credit corporations now hold, roughly, 82 percent of the stock. However, this does not change the possibility that production credit corporations may readily be minority stockholders.

It has been held by this office that employees of Federal land banks are not subject to Section 9 of the Hatch Act, largely on the theory that the ownership of Federal land banks may lie, in whole or in part, in national farm loan associations, and other borrowers from Federal land banks, which are or represent only private interests, and that, therefore, the Federal land banks are not to be regarded as agencies or departments of the executive branch of the Government, within the meaning of said section 9 (Op. Sol. No. 2543, June 17, 1940). Applying this reasoning to the production credit associations, it appears that it should likewise follow that such associations are even less closely identified with the United States than the Federal land banks. Moreover, no particular point may be made out of the fact that production credit associations are in fact controlled by the production credit corporations, since the land banks, in their turn, are directly controlled by the farm credit district boards, which are Federal agencies, at least within the meaning of the Hatch Act. See Op. Sol. No. 2518, June 11, 1940.

Accordingly, it is the opinion of this office that, like the Federal land banks, the production credit associations are not departments or agencies of the executive branch of the Government, within the meaning of Section 9 of the Hatch Act.

There remains to determine the application of Section 2 of the Hatch Act which, unlike Section 9, is a criminal provision and for ultimate definition by the courts. The essential difference between the scope of section 2 and section 9 is that the former section applies to departments and independent agencies of all branches of the Government of the United States, expressly including "any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof." While the production credit associations are called "associations," they are, in fact, corporations. 12 U.S.C., sec. 1131d. Although the production credit corporation for the district does not hold voting stock in the associations, so long as the corporation holds any stock in an association, the directors and officers of the association are subject to removal by the president of the production credit corporation for the district, and the appointment or election of the directors, the secretary-treasurer and the loan committee of the association is subject to the approval of the president of the production credit corporation. 12 U.S.C., 1131e. These circumstances appear to give the production credit corporations control in fact over the associations.

It is the opinion of this office, therefore, that Section 2 of the Hatch Act is applicable to officers and employees of a production credit association, so long as any stock in the association is held by the production credit corporation for the district.

Very truly yours,

(Signed) Mastin G. White

Solicitor.